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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,960	05/04/2005	Wen Zhao	PAT 799W-2	8081
26123 7590 07/31/2007 BORDEN LADNER GERVAIS LLP WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA			EXAMINER LY, NGHI H	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/533,960	ZHAO ET AL.	
	Examiner	Art Unit	
	Nghi H. Ly	2617	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 2-10 and 12-27.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 07/06/07 have been fully considered but they are not persuasive.

On pages 2 and 4 of applicant's remarks, applicant argues that Hunzinger does not teach determining, at minimum fixed time intervals determined by a service check timer, the status of a previously established data connection.

In response, Hunzinger does indeed teach determining, at minimum fixed time intervals determined by a service check timer, the status of a previously established data connection (see column 2, lines 22-29, see "*timer*" and "*after a failed connection*", column 4, lines 8-16, see "*an initial attempt to connect has failed*" or column 4, lines 17-21, see "*the mobile station 106 was unable to communicate with the base station*" or see "*if the connection with the base station 104 is unsuccessful*", in Hunzinger, the terms "*failed*", "*was*" and/or "*unsuccessful*" read on applicant's "*a previously established data connection*", and column 7, lines 7-26, where Hunzinger teaches the minimum fixed time intervals. In addition, applicant's specification fails to further define what "the minimum fixed time intervals" is. Therefore, Hunzinger does indeed teach applicant's claimed limitation with a broadest reasonable interpretation).

On page 4 of applicant's remarks, applicant further argues that Hunzinger does not teach how to determine if a previously established connection has been lost.

In response, Hunzinger does indeed teach determining, at minimum fixed time intervals determined by a service check timer, the status of a previously established

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data connection (see column 2, lines 22-29, see "*timer*" and "*after a failed connection*", column 4, lines 8-16, see "an initial attempt to connect has failed" or column 4, lines 17-21, see "*the mobile station 106 was unable to communicate with the base station*" or see "*if the connection with the base station 104 is unsuccessful*", in Hunzinger, the terms "failed", "was unable" and/or "unsuccessful" read on applicant's "determine if a previously established connection has been lost").

On pages 4 and 6 of applicant's remarks, applicant further argues that Hunzinger, Thornton, Marry, the Official notice or Hunzinger II does not teach "a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost".

In response, the combination of Hunzinger, Thornton, Marry, the Official notice and Hunzinger II does indeed teach all the claimed limitations of independent claim 12 and all the limitations of a dependent claim 12. In addition, applicant's attention is directed to the teaching of Hunzinger, Thornton, Marry, the Official notice and Hunzinger II in the previous Office action, and in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Hunzinger teaches a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost (see column 2, lines 22-29, see "*timer*" and "*after a failed connection*", column 4, lines 8-16, see "an initial attempt to

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connect has failed" or column 4, lines 17-21, see "*the mobile station 106 was unable to communicate with the base station*" or see "*if the connection with the base station 104 is unsuccessful*", in Hunzinger, the terms "failed", "was unable" and/or "unsuccessful" read on applicant's "a previously established data connection is checked to determine if it has been lost", and column 7, lines 7-26, where Hunzinger teaches the minimum fixed time intervals determined by a service check timer as recited in claim 21. In addition, applicant's specification fails to further define what "the minimum fixed time intervals" is. Therefore, Hunzinger does indeed teach applicant's claimed limitation with a broadest reasonable interpretation).

On page 4 of applicant's remarks, applicant further argues that Hunzinger is silent as to any determination of the data connection status after the data connection is established.

In response, Hunzinger does indeed teach determining, at minimum fixed time intervals determined by a service check timer, the status of a previously established data connection (see column 2, lines 22-29, see "*timer*" and "*after a failed connection*", column 4, lines 8-16, see "an initial attempt to connect has failed" or column 4, lines 17-21, see "*the mobile station 106 was unable to communicate with the base station*" or see "*if the connection with the base station 104 is unsuccessful*", and they read on applicant's "determination of the data connection status after the data connection is established").

On page 5 of applicant's remarks, applicant further argues that Thornton does not teach determining status of previously establishes data connection.

Thornton does indeed teach determining status of previously establishes data connection (see [0060], where Thornton teaches "re-establish the previously terminated data mode connection").

On page 5 of applicant's remarks, applicant further argues that no motivation to combine Hunzinger and Thornton.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to do so found in the references themselves in order to provide a method for sampling music on a wireless communication device (Thornton, Abstract).

On page 5 of applicant's remarks, applicant further argues that Hunzinger and Thornton cannot achieve claimed invention.

In response, the combination of Hunzinger and Thornton does indeed achieve applicant's claimed invention. In addition, applicant's attention is directed to the teaching of Hunzinger and Thornton in the previous Office action.

For the above reasons, the Examiner believes that the rejections to claims are proper.

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***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi H. Ly whose telephone number is (571) 272-7911. The examiner can normally be reached on 9:30am-8:00pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nghi H. Ly

